

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 MARIAH LOPEZ,

5 Plaintiff,

6 v.

17 CV 3014 (VEC) (OTW)

7 THE CITY OF NEW YORK, et al.,

8 Defendants.

9 Conference

10 -----x
11 New York, N.Y.
12 September 10, 2019
13 2:25 p.m.

14 Before:

15 HON. ONA T. WANG,

16 U.S. Magistrate Judge

17 APPEARANCES

18 MARIAH LOPEZ, Plaintiff Pro Se (by telephone)

19 GEORGIA PESTANA

20 Acting Corporation Counsel for the City of New York

21 Attorney for Defendants

22 BY: THOMAS B. ROBERTS

23
24 Also Present: Chinyere Ezie, Center for Constitutional Rights
25 Brittany Francois, NYC DSS

1 (Case called)

2 THE COURT: Welcome. Thank you. I'm sorry we are
3 starting a little bit late today. There has been a little bit
4 of a comedy of errors, including on my part.

5 Ms. Lopez, you can hear us all right?

6 MS. LOPEZ: Yes, your Honor. Thank you again for
7 accommodating me by this phone conference. Thank you.

8 THE COURT: Not a problem.

9 Just to bring defense counsel up to speed, we
10 understand that Ms. Lopez is attending classes outside of the
11 city. Going forward we will probably try to schedule in-person
12 conferences on Mondays or Fridays, which will enable Ms. Lopez
13 to attend in person.

14 However, I am also now seeing somebody sitting at
15 plaintiff's table who is not Ms. Lopez, so maybe, Ms. Ezie, you
16 can let us know --

17 MS. EZIE: Thanks, your Honor, for allowing me to
18 attend today's conference. My name is Chinyere Ezie. I'm an
19 attorney at the Center for Constitutional Rights.

20 Although we have not had made a formal appearance, we
21 are very optimistic the parties are close to settling. We are
22 evaluating possibly making a formal appearance, particularly if
23 the Court is still interested in having settlement counsel
24 appointed.

25 THE COURT: I would say that I am extremely interested

1 in having settlement counsel.

2 Mr. Roberts, is Ms. Ezie's appearance today here a
3 surprise to you, or it sounded like the parties are close to
4 settling or discussing settlement?

5 MR. ROBERTS: Your Honor, Mr. Lopez advised me in a
6 telephone conversation I think within the last week that she
7 had reached out to the Center for Constitutional Rights and
8 they might take some position on her behalf, but I was not
9 expecting Ms. Ezie. But I, like the Court, I think, would have
10 no objection to her involvement in some settlement
11 negotiations.

12 THE COURT: Not only no objection, but I think it
13 would be very, very welcome to have your assistance.

14 One thing I do need to disclose. I am not sure,
15 Ms. Ezie, if you're aware, but my prior firm was Baker &
16 Hostetler. Before I left the firm, Ms. Ezie and I were
17 opposing counsel on an employment discrimination case. It's
18 been decided now.

19 MS. EZIE: I forgot.

20 THE COURT: My involvement in the case was very
21 limited to essentially writing a few of the briefs in the case.
22 A large chunk of the case, including a section during most of
23 the summary judgment briefing, I was actually out on maternity
24 leave. However, I believe I had entered an appearance in that
25 case, so we were actually opposing counsel. This is the first

1 time I've seen Ms. Ezie face to face.

2 I don't think that it is an issue under 28 U.S.C. 455,
3 having reviewed it just now, but I will leave it open for
4 anybody to raise that as an issue. I don't think it's an
5 issue, but I don't want to pressure anybody. If anybody thinks
6 it's an issue at all, I would prefer to have Ms. Ezie
7 representing Ms. Lopez so that if that were to present a
8 problem I might be able to recuse myself or have the settlement
9 conferences be before another MJ.

10 I am just putting that out there to make sure that it
11 is all fully disclosed. I take no position on the matter. But
12 I did want to let you all know and give you some time to
13 respond if you think it's necessary. You don't need to respond
14 today.

15 MS. EZIE: Your Honor, might I just add a point or
16 two. I think I had forgotten that trivia because this was a
17 previous career. I was at the EEOC, and I don't believe we
18 overlapped because I joined after summary judgment was fully
19 briefed.

20 THE COURT: I might have filed a motion for
21 reconsideration. That's potentially --

22 MS. EZIE: The only overlap. That's possible.

23 THE COURT: I was never in court on the case.

24 MR. ROBERTS: Your Honor, should the Center for
25 Constitutional Rights appear, I think it extremely unlikely

1 that the defendants would claim that there was any conflict
2 presented by the developments you just disclosed.

3 THE COURT: I had prepared an agenda based on what I
4 knew a week ago. Obviously, a lot of things have changed.

5 Why don't we start with what I had as No. 3 on my
6 agenda, which is settlement discussions. I know that in the
7 past I had asked both sides to provide *ex parte* their history
8 of what the settlement negotiations might have been and then
9 where each side was. I had done that to try to assess whether
10 there was any potential overlap where a settlement conference
11 might be meaningful or useful.

12 If the Center for Constitutional Rights were to enter
13 an appearance either for the limited purpose of settlement or,
14 I would prefer, for a broader purpose -- Ms. Lopez.

15 MS. LOPEZ: I hear you, your Honor. I chuckled.

16 THE COURT: I wanted to make sure you could hear
17 everything.

18 I would just want to make sure, Ms. Lopez, that you
19 shared your views and your thoughts in any submissions that you
20 have made to the Court *ex parte* to share with Ms. Ezie so she
21 knows sort of what the parties' respective positions were at
22 least a few months ago.

23 MS. LOPEZ: Sure. I have and I will continue to do
24 so, your Honor.

25 THE COURT: Ms. Ezie, how much time would you need to

1 further discuss with Ms. Lopez whether you would be willing to
2 represent her for purposes at least for settlement and then
3 proceed along those lines?

4 MS. EZIE: Sure. We have just to complete sort of the
5 conflicts check at my firm. I think within two weeks' time we
6 would be easily able to accommodate that.

7 THE COURT: If you elect to proceed that way, let's
8 see if you can file a notice of appearance within the next --
9 two weeks puts us at the 24th. How about we will give you an
10 extra week on top of that, by October 1, for notice of
11 appearance. If so, we will pursue settlement discussions
12 avidly and quickly.

13 I know Ms. Lopez had also wanted to proceed with some
14 third-party discovery as well as I think we were in the process
15 of getting, Ms. Lopez, your sealed family court records.

16 MS. LOPEZ: Sure.

17 THE COURT: What are your thoughts on proceeding on
18 third-party discovery and -- let's look at that first because I
19 think in my last order I had wanted you to come here today with
20 sort of a list of topics. However, if Ms. Ezie enters an
21 appearance on your behalf for purposes of litigation as well,
22 then she would actually be able to serve the third-party
23 subpoenas, and you wouldn't need the Court's assistance in
24 doing so.

25 MS. LOPEZ: Sure. Obviously. Yes.

1 THE COURT: What are your thoughts on that?

2 MS. LOPEZ: My thoughts are that until the ink is dry
3 and until they finalize with the CCR, I would like to proceed
4 just as we were going to today with the caveat, obviously, that
5 the Court was expecting me to appear in person with certain
6 materials or at least information to provide to -- my desired
7 third-party information.

8 What I think might be a logistical plan is, I'm set to
9 come to the city on the 16th. So as the Court indicated in the
10 order, the Court itself doesn't need to -- can tell a lot of
11 those documents are available to me under Rule 45 or some other
12 rule. I can come down on Monday and obviously consult with
13 Center before Monday. But I can come down Monday and sort of,
14 I think, the next step, if I were proceeding pro se, were to
15 handle the document requests myself because I don't think there
16 is any way that CCR is going to complete its background check,
17 and obviously we set the 1st of October as the next date.

18 I should proceed, your Honor, as normally and during
19 the next couple of days also communicate with CCR the documents
20 I'm looking for. I think I've also been pretty open on the
21 record on what I've been seeking. It's a matter of formalizing
22 the requests for the documents.

23 THE COURT: One potential wrinkle in all of this is
24 that the week of the 16th I am on criminal duty.

25 Let me just check something.

1 MR. ROBERTS: Your Honor, could I be heard for just a
2 second?

3 THE COURT: Yes.

4 MR. ROBERTS: Seems to me it's really ill-advised to
5 go into discovery in the next three weeks. I can assure you
6 that if there is a subpoena served on the mayor, the mayor has
7 not been deposed in any case now in seven years, there will be
8 significant motion practice.

9 I really don't think it's productive for us to go off
10 on a real frolicking detour of motions to suppress subpoenas
11 and all of that when counsel may well be about to appear and
12 put the case in a posture where it could actually move forward.

13 I would request that we not generate a great deal of
14 disputes in the next three weeks. If indeed the Center does
15 not appear after three weeks, then Ms. Lopez can start her
16 disputes. I really request that we not foul the mess further.
17 Leave it somewhat clean for the new counsel to come in.

18 THE COURT: Stop.

19 Ms. Lopez, you may get a chance to respond, but first
20 I have to check something on my schedule.

21 MS. LOPEZ: No worries.

22 Can I respond to Mr. Roberts, your Honor?

23 THE COURT: Ms. Lopez, I don't think you need to
24 because I am going to.

25 I don't think that allowing Ms. Lopez to proceed in

1 terms of trying to clarify or even work on formalizing a list
2 of discovery demands is going to imminently lead to the
3 issuance of subpoenas because if during this time CCR enters an
4 appearance that's broader, this may well be obviated. If not,
5 and we know, we won't have lost time.

6 I understand, and I recall that we had a conference in
7 August that had to be truncated because of various issues, but
8 this is an issue, this is a discovery issue that has been very
9 important to Ms. Lopez for several months, and we have not been
10 able to get any traction on it.

11 I'm not going to issue subpoenas immediately upon
12 Ms. Lopez formulating demand and being able to discuss those
13 demands. Indeed, those may be something that she may want to
14 discuss with Ms. Ezie during the period of time when CCR is
15 considering whether to enter an appearance either for
16 settlement or for more purposes. I don't think that there is
17 necessarily any benefit to staying the case or directing
18 Ms. Lopez not to do what she wants to do in terms of litigating
19 her case. Rest assured, nobody is going to be running out and
20 serving subpoenas and ordering depositions of the mayor in the
21 next week. That's not going to happen.

22 As far as the third-party discovery goes, I guess,
23 Ms. Ezie, I am going to prevail on you, since you are here, to
24 discuss with Ms. Lopez the potential timing for that and how it
25 might play into settlement discussions.

1 If CCR were to enter an appearance for the limited
2 purpose of settlement, what would probably happen is, I would
3 probably try to get a settlement conference on the calendar
4 sooner rather than later, and I might move things to make it
5 happen.

6 And while at the same time I don't necessarily see a
7 problem with pursuing some third-party discovery or limited
8 discovery in aid of settlement, you might want to think about
9 what discovery might be necessary in order to have more fulsome
10 settlement discussions and maybe try to tailor the more
11 immediate requests to be more in aid of settlement since I
12 would really like to try to focus on that.

13 Ms. Lopez, why don't you work on that. If there
14 arises a need for you to actually write in to the Court for
15 relief without Ms. Ezie's assistance or before she has had an
16 opportunity to resolve whether they would or would not be
17 entering an appearance on your behalf for any purpose, go ahead
18 and do that, and we will try to resolve it.

19 MS. LOPEZ: If I can, your Honor, I am going to
20 obviously allow for the Court to finish its agenda.

21 But I just have to say, starting from the top of my
22 notes that I was writing over the last couple of minutes, what
23 is occurring right now organically is exactly part of the
24 reason that the plaintiff didn't necessarily want to sort of
25 expeditiously include outside counsel for settlement

1 negotiations only just because I already feel like the lawyers
2 in the room are like, we can handle this and someone explain
3 this to her.

4 I am very aware of what I'm asking for, the posture of
5 this case. The types of motions I initially filed entitles me
6 to expedited discovery and no part of this discovery, none of
7 it. That's No. 1.

8 I don't want the Court or the parties to feel, all
9 right, well, CCR is here and we can deal with CCR. I am not
10 also sort of having a tantrum or trying to hit the city with a
11 blitzkrieg of subpoenas.

12 My desire is to focus in on the misconduct that I am
13 alleging occurred in 2017 and ask for supporting documents and
14 witness testimony to support that, including the mayor,
15 including the speaker, including Richie Torres, and I repeated
16 this over and over.

17 I am starting to feel like maybe the Court and
18 defendants and even CCR might sort of not be taking the reasons
19 for my discovery requests seriously or underestimate my ability
20 to gauge whether or not they are important, even in discovery,
21 your Honor.

22 Piggybacking on what you just said, I don't think it's
23 appropriate to move forward in any settlement negotiation
24 posture without some form of discovery on the part of the
25 defendants. We know everything about Mariah.

1 There can be no doubt, your Honor, that Mr. Roberts,
2 as Corporation Counsel, has access to more than just what's
3 provided before the Court in terms of plaintiff's background
4 information. He is a city lawyer. He has access to hundreds
5 of documents related to either my placement at Marsha's House
6 or gosh knows what else.

7 I think moving forward plaintiff is digging in her
8 heels. We should not -- I don't expect plaintiff to move one
9 iota forward unless we resolve at least -- I believe expedited
10 discovery is long overdue.

11 I believe the very narrowed requests, even though they
12 seem broader, macro to people that don't, you know, rub elbows
13 with politicians, but I am very narrow focused in my desire to
14 ask for all of the e-mail and electronic communications to and
15 from Richie Torres regarding plaintiff and the Marsha's shelter
16 or DHS' dealings with Marsha's shelter residents. You get it.

17 I know the Court is limited with its time. I
18 appreciate accommodating the phone conference. I feel like I'm
19 the little kid in the room and that people don't think the
20 documents I'm requesting are to be taken seriously or that
21 hopefully we will resolve this before we get those, your Honor.

22 As you pointed out, I think discovery should move
23 forward even in a meaningful way. If CCR is going to say to
24 the city or even take a position to the city, come on, you are
25 not being fair because we have e-mails for Richie Torres

1 calling her crazy or making unsupported comments behind the
2 scenes about what was or was not happening at Marsha's based on
3 the evidence that we have today, then that's relevant.

4 THE COURT: Ms. Lopez, this is part of the problem if
5 you're on the phone, is that one of the reasons why I wouldn't
6 let you respond to Mr. Roberts was, I was checking my calendar
7 to see if I could actually potentially have you in in person
8 when I am supposed to be on criminal duty, if there was a way
9 to accommodate that.

10 Now that I am looking at the order that I entered, and
11 that is ECF No. 174 which was actually issued on Friday, you
12 don't need my permission or my intervention to serve the
13 subpoenas you want to serve.

14 MS. LOPEZ: I'm aware of that, your Honor.

15 THE COURT: Go ahead and do what you want to do. I'm
16 only suggesting that you talk to Ms. Ezie, see if you think
17 that's what would move things forward.

18 Also, you know, if there is something in your
19 discovery or if there is particular information that you think
20 would be helpful in terms of framing your position in a
21 settlement conference, we should make that a priority.

22 MS. LOPEZ: Yes, your Honor.

23 THE COURT: You will go do what you need to do on
24 that, and we will see what happens there.

25 MS. LOPEZ: Yes, your Honor.

1 THE COURT: The next item on my agenda was the family
2 court records. We needed your name change order in order to
3 forward it to the family court so that the SDNY could get those
4 records.

5 MS. LOPEZ: I have not heard back from the Sylvia
6 Rivera Law Project. I think, especially with CCR on board now,
7 it might be easier to help me navigate getting that order.
8 Like I expressed before, it has been a bit of a legal limbo for
9 me because it wasn't my law guardians who handled the name
10 change. I was still a minor, though. It was under Sylvia
11 Rivera Law Project. I have not been able to get a copy of the
12 name change order myself. Maybe Center for Constitutional
13 Rights can be helpful in either contacting Sylvia Rivera Law
14 Project --

15 THE COURT: Ms. Lopez, I'm sorry to interrupt you, but
16 the court reporter is having a very hard time keeping up with
17 you.

18 MS. LOPEZ: My apologies.

19 THE COURT: I'm going to give you guidance on how to
20 make it easier for the court reporter to understand you.

When you are on the phone, you need to speak about half the speed you are speaking right now. I understand it's hard. Speak slowly and overenunciate your words.

24 MS. LOPEZ: Yes, your Honor.

25 THE COURT: Thank you.

1 MS. LOPEZ: You're welcome.

2 THE COURT: To recap, because I think I heard it
3 correctly, you need to get the name change order from the
4 Sylvia Rivera Law Project, and you simply have not been able to
5 get it yet.

6 MS. LOPEZ: That is the one place that I knew it was
7 where I reached out to -- yes, I have not gotten a response.

8 THE COURT: Just keep at it. I just really wanted a
9 status on that.

10 MS. LOPEZ: Your Honor, part of the problem, just to
11 put it on the record, is that I think in court, in civil court,
12 where the name change occurred, you have to have proof of the
13 previous name, and I no longer have that. Just to be clear why
14 I didn't just go straight to the clerk of the court.

15 THE COURT: Got it.

16 Unfortunately, that makes perfect sense to me, but it
17 makes it difficult for you.

18 Anything else that we should address at this time?

19 MS. EZIE: Your Honor, if I may, just a question about
20 discovery in aid of settlement.

21 Defendants, would you have any objection to exchanging
22 some discovery prior to settlement conference?

23 MR. ROBERTS: Probably not. At your Honor's
24 instruction, I sent Ms. Lopez on June 17 a proposed protective
25 order. I never heard back from her. But maybe that might be a

1 preliminary before actually producing something. If there were
2 document requests served on me, I would respond to it in an
3 appropriate fashion.

4 MS. EZIE: Your Honor, do you have a sense of your
5 next availability for a settlement conference?

6 THE COURT: Let me take a look. My problem is that I
7 rearranged my schedule several months ago, so I have one
8 criminal duty week in September and one criminal duty week in
9 October. That means that all my civil cases that need
10 attention during that time now only have six weeks instead of
11 eight weeks to get the attention they need.

12 That said, because this case weighs heavily on me,
13 right now I am looking at mid October, but I might be able to
14 move some things around if we needed to do it sooner than that.

15 MS. EZIE: Just thinking about, if we are not able to
16 respond to discovery requests on a more expedited basis, just
17 thinking ahead to November, early November, if you have --

18 THE COURT: November isn't a problem. I thought you
19 wanted to get in earlier than that.

20 What I have been doing in this case, since Ms. Ezie is
21 new, is I've been setting in-person status conferences. This
22 case is on what I call the dental plan. You never leave
23 without another conference date. It might make sense to have
24 the next conference date on a Monday or Friday after CCR either
25 files or doesn't file a notice of appearance. Unfortunately,

1 that takes us to criminal duty.

2 You know what we can do. I was looking at the week of
3 October 7. October 4 is a Friday. We could try for October 4
4 at 9:00 is the only time I have that day, unfortunately.

5 MR. ROBERTS: Your Honor, I have a doctor's
6 appointment scheduled at that time. I hope you wouldn't do it.

7 If counsel has only appeared three days in advance, I
8 don't really think we would be quite ready to productively
9 meet.

10 THE COURT: That wouldn't be a settlement conference.
11 That would be a status --

12 MR. ROBERTS: Even a status conference.

13 THE COURT: Mr. Roberts, normally in a regular civil
14 case I have a presettlement telephone call that is off the
15 record where the parties talk about the relative merits of the
16 case and where they have been in the past in terms of
17 settlement discussions, if there has been discovery that needs
18 to be exchanged and so on. At that telephone conference is
19 when I set the settlement conference date. I don't want this
20 case to slip too far.

21 In the event that CCR elects not to enter an
22 appearance, we need to address that. And having addressing
23 that on the 4th will be necessary. we are not doing the 4th
24 anyway because you have a doctor's appointment.

25 My point is, having a next status conference a month

1 or so from now is not unreasonable whether CCR enters an
2 appearance or not and whether it's limited or not. We need to
3 see where we are. If they elect not to enter an appearance, we
4 need to figure out what we are going to do, where we are going
5 to go from there. If they do enter an appearance and we are
6 going to be talking about settlement, that's when we will
7 schedule the settlement conference, and you will need enough
8 time to prepare for the settlement conference. If we are going
9 to schedule something in late October or November, that's about
10 as much time as I would like the parties to prepare for a
11 settlement conference.

12 The following week, the week of October 7, I could try
13 to see you early in the morning on the 11th or early in the
14 morning on the 7th. By early I mean either 9 or 9:30.

15 MR. ROBERTS: I routinely have a doctor's appointment
16 Friday mornings, but I could be here by 10:30 on Fridays. I
17 take it the 7th is a Monday. I don't have a calendar in front
18 of me. Is the 7th a Monday?

19 THE COURT: Yes.

20 MR. ROBERTS: That day works or any Monday.

21 THE COURT: The next conference, in-person conference,
22 will be on October 7, which is a Monday at 10:30 in the
23 morning.

24 Ms. Lopez.

25 MS. LOPEZ: Yes, your Honor.

1 THE COURT: I thought you were going to say something.

2 MS. LOPEZ: I was just making sure we were on the same
3 page.

4 THE COURT: October 7, 10:30 a.m.

5 MS. LOPEZ: I did have one other thing I wanted to
6 bring up. I can't stress enough. I am not trying to take any
7 steps backwards or any of the steps forward that we have taken
8 in this case. However, plaintiff has brought up the fact that
9 I believe that Mr. Roberts last counteroffer --

10 THE COURT: Wait, wait. Settlement discussions need
11 to be confidential. We have a court reporter here. I now have
12 at least one attorney for my next conference sitting in the
13 courtroom. Can you talk about it more generally, about your
14 issue more generally without disclosing --

15 MS. LOPEZ: What's in the offer there was a reasonable
16 accommodation that I do not think can be deprived, even if
17 plaintiff does not take this universal settlement.

18 I continuously feel that although all parties
19 understand that homelessness is the central issue in this case,
20 I'm pretty sure that no relief has been ordered by this Court
21 to resolve the central issue. And even if we resolve with
22 settlement, we are either putting a Band-Aid on something or
23 let it heal in open air, whatever figurative term you want.

24 The issue at the center of the case, that is also
25 unaddressed with the contingent accommodation, if I'm skirting

1 around it, I just think it's illegal. It is patently illegal
2 for him to have attached that stipulation to that
3 accommodation. And I think the Court should order the
4 accommodation that the issue was central to this case and it
5 represents a pivot on the part of the municipal defendants. It
6 should be addressed.

7 THE COURT: We can talk about it more when we talk
8 about how settlement conferences are different from open
9 litigation.

10 But one of the issues here is, I'm only the magistrate
11 judge in this case, so I do not have the authority to enter any
12 kind of injunctive relief or case dispositive relief. The only
13 instances where something like that may happen is where I'm
14 successful in the settlement conference, but that's only
15 because both parties agree with what should happen. Even then
16 the district judge is the one who enters the final order
17 resolving the case.

18 I hear you loud and clear. I understand and I think I
19 know what your issue is because you have raised it before and
20 you have raised it with me before when we broke out in our
21 separate sessions when we were first talking about settlement,
22 I believe earlier in the spring. I will keep that thought in
23 mind. Believe me.

24 MS. LOPEZ: Yes, your Honor.

25 THE COURT: Anything else?

1 MS. EZIE: No, your Honor.

2 THE COURT: Ms. Lopez, anything else for today?

3 MS. LOPEZ: No, your Honor. Thank you.

4 THE COURT: Mr. Roberts.

5 MR. ROBERTS: No, your Honor.

6 THE COURT: Defendants are directed to order the
7 transcript and provide a copy to Ms. Lopez. I'll see you on
8 October 7.

9 Thank you. We are adjourned.

10 (Adjourned)

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